

PART II - CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

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I-1 PRICE OF FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

(a) The CFSA, at its election, may reduce the price of a fixed-price indefinite delivery/indefinite quantity type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contract activity or his or her designee, determines that there was a violation of the contract clause. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b) of this clause.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be -

For firm-fixed-price contracts or contract modifications,

- (i) by 10 percent of the initial contract price;
- (ii) 10 percent of the contract modification price; or
- (iii) a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The CFSA may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the clause by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraph (a) and (c) of this clause, the CFSA may terminate this contract for default. The rights and remedies of the CFSA specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I-2 STANDARDS OF PERFORMANCE

Contractor shall at all times act in good faith and in the best interests of the CFSA, use its best efforts and exercise all due care and sound business judgment in performing its duties under this Request for Proposal. Contractor shall at all times comply with CFSA policies, procedures and directives, which are incorporated by reference and made part of this Request for Proposal.

I-3 OPTION TO EXTEND SERVICES

The CFSA may require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

I-4 OPTION TO EXTEND THE TERM OF CONTRACT

(a) The CFSA may extend the term of this contract by written notice to the Contractor within 30 days; provided, that the CFSA shall give to the Contractor a preliminary written notice of its intent at least 60 days before the contract expires. The preliminary notice does not commit the CFSA to an extension.

(b) If the CFSA exercise this option, the extended contract shall be considered to include this provision.

(c) The total duration of this contract, including the exercise of any options under this contract, shall not exceed five (5) years.

I-5 AVAILABILITY OF FUNDS

The CFSA's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the CFSA for any payment may arise if funds are not made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

I-6 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not presently available for performance under this contract beyond 30 September 2003. The CFSA's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the CFSA for any payment may arise for performance under this contract beyond 30 September 2003, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

I-7 SUSPENSION OF WORK

The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the CFSA

(a) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted

(1) by an act of the Contracting Officer in the administration of this contract, or

(2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified),

An adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly.

However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

I-8 ACCOUNTING AND AUDITS

The Contractor shall maintain an accounting system which conforms with generally accepted accounting principles which permits an audit of all income and expenditures received or disbursed by the Contractor in the provision of services under this contract.

The Contractor shall make provisions, upon request by the Contract Specialist or their designee(s), for inspection of contract and financial records, including but not limited to, audited financial statements and tax returns for a maximum of three (3) years after the termination of this contract.

I-9 TERMINATION FOR CONVENIENCE

1. CFSA may terminate performance of work for convenience under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in CFSA's best interest.

2. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination and, except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

- (a) Stop work as specified in the notice.
- (b) Place no further subcontracts or orders except as necessary to complete the continued portion of the contract.
- (c) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
- (d) Assign to CFSA, as directed by the Contracting Officer, all rights, titles, and interests of the Contractor under the subcontracts terminated, in which case CFSA shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
- (e) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification shall be final for purposes of this clause.
- (f) Transfer title, if not already transferred, and, as directed by the Contracting Officer, deliver to CFSA any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated, and (ii) completed or partially completed plans, drawings, and information.
- (g) Complete performance of the work not terminated.
- (h) Take any action that may be necessary for the protection and preservation of property related to this contract.

I-10 TERMINATION FOR DEFAULT

1. CFSA may, subject to the paragraphs below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- (a) Perform the services within the time specified in this contract or any extension; or
- (b) Make progress so as to endanger performance of this contract; or
- (c) Perform any of the other material provisions of this contract.

2. CFSA's right to terminate this contract may be exercised if the Contractor does not cure such failure within 10 days (or such longer period as authorized in writing by the Contracting Officer) after receipt of the notice to cure from the Contracting Officer specifying the failure.

- (a) If CFSA terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies and services similar to those terminated, and the Contractor shall be liable to CFSA for any excess costs for those supplies and services. However, the Contractor shall continue the work not terminated.
- (b) Except for default by Subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God, (2) fires or floods, (3) strikes, and (4) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (c) If the failure to perform is caused by the fault of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and the Subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other

sources in sufficient time for the Contractor to meet the required schedule.

- (d) If the contract is terminated for default, CFSA may require the Contractor to transfer title and deliver to CFSA, as directed by the Contracting Officer, any completed and partially completed supplies and materials that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which CFSA has an interest.
- (e) CFSA shall pay contract price for completed supplies and services delivered and accepted.
- (f) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CFSA.
- (g) The rights and remedies of CFSA in this clause are in addition to any other rights and remedies provided by law or under this agreement.

I-11 ADMINISTRATIVE REMEDIES, CONTRACT CLAIMS & DISPUTES

All contract claims and disputes shall be governed in accordance with the CFSA's Financial Operations Policies and Procedures Manual as amended.

A copy of the CFSA's Policies and Procedures relating to this agreement may be furnished and includes specific language on this Article's procedures. Until a final resolution of any dispute, both parties shall continue to perform in accordance with the terms and conditions of this Agreement

I-12 RIGHTS IN DATA

Any data first produced in the performance of this contract shall be the sole property of the CFSA. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by the Contractor for CFSA under this contract are works made for hire and are the sole property of CFSA; but, to the extent any such data may not, by operation of law, be works made for hire, the Contractor hereby transfers and assigns to CFSA ownership of copyright in such works, whether published or unpublished.

The Contractor agrees to give the CFSA assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the CFSA at such time as to review the intent to release such data to the public. The CFSA shall not unreasonably withhold consent to the Contractor's request to publish or reproduce data in professional and scientific publications.

I-13 CERTIFICATION REGARDING A DRUG-FREE WORKPLACE

A. The Contractor shall within 30 calendar days after award agree to perform the following:

- (1). Publish a statement (a) notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and (b) specify the actions that shall be taken against employees who violate that prohibition.
- (2). Establish an ongoing drug-free awareness program to inform employees about (a) the dangers of drug abuse in the workplace, (b) the contractor's drug-free work-place policy, (c) any available drug counseling, rehabilitation, and employee assistance programs, and (d) the possible penalties for drug abuse violations occurring in the workplace.
- (3). Require that employees directly involved in performing actions required under this contract notify

the Contractor within five days of any criminal drug conviction for a violation occurring in the workplace; and

- (4). Notify the Contracting Officer about any such conviction within 10 days after the Contractor (a) receives the above notice from the employee or (b) otherwise receives actual notice from any employee convicted of a drug abuse violation in the workplace, and either taking "appropriate personnel action" against the employee (up to and including termination) or requiring the employee to participate in an approved drug abuse assistance or rehabilitation program.

I-14 **FACTORING NOT ALLOWED**

The Contractor shall not assign payments or sell its invoices to any third party, including "factoring" companies or other creditors. Due to the potential negative impact upon an operating program (in which services are provided to minor children) and the potential loss of Federal reimbursement funds, CFSA shall not recognize third party claims for any Contractor invoice receipts save those placed by a properly executed lien to satisfy an indebtedness to the US CFSA.

The CFSA shall neither recognize nor be a party to any third person agreements calling for the payment on invoiced amounts to any person other than the Contractor. No person in the CFSA has the authority to change or modify this policy except the CFSA.

I-15 **GOVERNING LAW**

This contract shall be governed by the procurement regulation in 27 DCMR.

I-16 **FIRST SOURCE AGREEMENT**

The Contractor shall complete an approved First Source Employment Agreement with the Department of Employment Services (DOES) within 30 days of contract award. This agreement provides that 51% of the employees who are new hires because of this procurement activity shall be sought by means of DOES agreement. The Contractor shall submit monthly reports on compliance to DOES.

I-17 **TRANSITION**

In the event of either the termination or expiration of the contract for these services, the Contractor shall assist the CFSA in the smooth and orderly transition of these services to a new Contractor. The Contractor shall work with the Program Manager to ensure that all youth in their care find suitable placements in new program.

The Contractor shall continue to provide the services, as described in Section C of this contract, for all youth that remain in their program during the Transition Period.

The transition period shall not exceed 120 days from either the termination date of services or the expiration date of the contract.

I-18 **CONTRACT PROVISIONS**

The Contractor shall perform all services, including services in modifications to this contract, if any, in accordance with the Child and Family Services CFSA Financial Operations Policy and Procedures Manual, June 1997.

I-19 **GRATUITIES**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the CFSA head or a designee determines that the Contractor, its agent, or another representative --

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the CFSA; and

(2)Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b)The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the CFSA is entitled --

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the CFSA head or a designee. The rights and remedies of the CFSA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-20 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person now employed by CFSA has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee except a bonafide employee or its agency. For breach or violation of this warranty, the CFSA shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

"Bona fide Agency" as used in this clause, means an established commercial or selling agent, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain CFSA contracts nor holds itself out as being able to obtain any CFSA contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain CFSA contracts nor holds out as being able to obtain any CFSA contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a CFSA contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a CFSA employee or officer to give consideration or to act regarding a CFSA contract on any basis other than the merits of the matter.

I-21 ANTI-KICKBACK PROCEDURES

Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the CFSA for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the CFSA.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

Providing or attempting to provide or offering to provide any kickback;

Soliciting, accepting, or attempting to accept any kickback; or

Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the CFSA or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation to the Contracting Officer.

The Contracting Officer may offset the amount of the kickback against any monies owed by the CFSA under the prime contract and/or direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c) of this clause be paid over to the CFSA unless the CFSA has already offset those monies under subdivision (c) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

I-22 PROGRESS PAYMENTS NOT INCLUDED

A progress payments clause is not included in this contract, and shall not be added to the resulting contract at the time of award. Offers conditioned upon inclusion of a progress payment clause in the resulting contract shall be rejected as non-responsive.

I-23 STOP-WORK ORDER

The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree.

The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either cancel the stop-work order; or terminate the work covered by the order as provided in the Termination for Default, or the Termination for Convenience, clauses of this contract.

If a stop-work order issued under this clause is canceled or the period of the order or any

extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly.

If the stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and the Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the CFSA, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

I-24 **CHANGES**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(b) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(c) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I-25 **DOCUMENTS INCORPORATED BY REFERENCE & ORDER OF PRECEDENCE**

The following documents are incorporated and made a part of this contract.

- a. CFSA Policies and Procedures Manual as amended.
- b. Public Law 105-89 "The Adoption and Safe Families Act of 1997."
- c. Office of Management and Budget Circular a-133, "Audits of Institutions of Higher Education and Other Non-profit Organizations."

I-26 **APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supply and Services Contracts dated October 1999 (Attachment J.1) are incorporated as part of the contract resulting from this solicitation.

***** END FSECTION I *****